

2-3-2015

Rekow v. Weekes Clerk's Record v. 3 Dckt. 42265

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Supreme Court No. 42265
SUPPLEMENTAL RECORD
Volume No. **2**

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

WILLIAM REKOW
Plaintiff/Appellant

VS

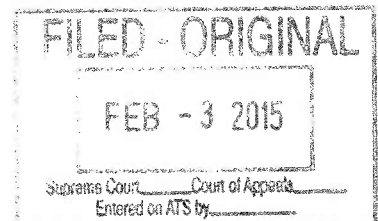
RONALD WEEKES
Defendant/Respondent

*Appealed from the District Court of the Third Judicial
District of the State of Idaho, in and for the County of Gem,*

Honorable Susan W Wiebe, District Judge

Appellant appearing Pro se

Jill Holinka
Attorney for Respondent



Filed this _____ day of _____, 20____

SHELLY TILTON, Clerk
Deputy

42265



Questions? Contact us at:
PO BOX 70, Boise, ID 83707.
Or call (208) 388-2323 (Treasure Valley).
Se habla español.
For faster service please call
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: WILLIAM D REKOW
Account Number: [REDACTED]
Billing Date: 09/21/2012
Print Date: 09/21/2012

Service Agreement No: 2957689251

Next Read Date: 10/19/2012
HOUSE

Service Location: 9449 BRILL RD/EMMETT, ID

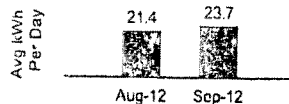
Meter Number	Service Period		Number of Days	Reading Type	Meter Readings		Motor Constant	kWh Used
	From	To			Previous	Current		
502A78944761	08/20/12	09/19/12	30	Regular	65922	66635	1	713

Billing kW	BLC
7	0

Residential 08/20/2012 - 09/19/2012 30 days
Rate Schedule Service Charge \$5.00
101 Non-Summer Energy Charge 0-800 kWh @ \$0.072355 per kWh, 19 days \$32.67
Summer Energy Charge 0-800 kWh @ \$0.078428 per kWh, 11 days \$20.50
Annual Adjustment Mechanism \$2.02
Energy Efficiency Services \$2.33
Federal Columbia River Benefits Supplied by BPA \$0.23 CR
Current Charges - Electric Service **\$62.29**

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric Use Pattern



If writing information below, please check the appropriate box on the reverse side.

NEW CONTACT INFORMATION:

Does Idaho Power have your correct mailing address and phone number?
If not, please write any changes below:

Name _____

Street _____ Apt./Suite _____

City _____ State _____ Zip Code _____

Telephone Number _____

Email Address _____

Account Number [REDACTED]

PROJECT SHARE PLEDGE

Please add the amount indicated to my monthly bill.

\$2 \$5 \$10

\$ _____

I would like to make a one-time contribution in the amount of \$ _____

Please round-up my monthly bill amount to the nearest dollar and contribute the difference to Project Share.

Thank you and please remember to track your tax-deductible donations.



An IDACORP Company

www.idahopower.com

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Or call (208) 388-2323 (Treasure Valley).
Se habla español.
For faster service please call
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: WILLIAM D REKOW
Account Number: [REDACTED]
Billing Date: 08/22/2012
Print Date: 08/23/2012

Page 1 of 2

Due Date	Please Pay
09/07/2012	\$53.63

Account
Activity

Previous Balance	\$0.00
Payments - Thank You	\$0.00
Balance Forward	\$0.00
Total Adjustments	\$20.00
Current Charges	\$33.63
Account Balance	\$53.63

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a rebilling will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

▼ Please detach and return the portion below with your payment. Please bring entire statement when paying at a pay station. ▼



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PO BOX 70
BOISE, ID 83707
(208) 388-2323 (Treasure Valley)



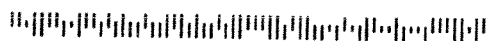
DUE DATE
09/07/2012
PLEASE PAY
\$53.63

Please write your account number on your check
or money order made payable to Idaho Power.

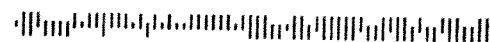
Amount Enclosed \$

Project Share pledge,
noted on reverse side.

Address/Phone Correction,
noted on reverse side.



1201 00016564
WILLIAM D REKOW
9449 BRILL RD
EMMETT, ID 83617-9714



PROCESSING CENTER
P.O. BOX 34966
SEATTLE, WA 98124-1966

87098471705000005363 000000000 000005363 0822 2

Susan E. Buxton, ISB #4041
 Jill S. Holinka, ISB #6563
 MOORE SMITH BUXTON & TURCKE, CHTD.
 950 W. Bannock Street, Suite 520
 Boise, ID 83702
 Telephone No.: (208) 331-1800
 Facsimile No.: (208) 331-1202
 Email: *seh@msbtlaw.com*
jsh@msbtlaw.com

Attorneys for Defendant

FILED
 A.M. *4:15* P.M.

FEB 19 2014

SHELLY TILTON, CLERK
 DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM**

WILLIAM D. REKOW,)	
	)	Case No. CV 2012-713
Plaintiff,)	
	)	DEFENDANT'S REPLY
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS
RONALD L. WEEKES and DOES I through)	
V, Inclusive,)	
)	
Defendants.)	

COMES NOW, Defendant Ronnie Weekes ("Weekes"), by and through his undersigned counsel of record, the law firm of MOORE SMITH BUXTON & TURCKE, CHTD., and hereby submits his reply in support of Defendant's motion to dismiss and motion to take judicial notice.

INTRODUCTION

By his motion to dismiss, Weekes seeks an order of this Court dismissing Plaintiff's Complaint in its entirety because Plaintiff has failed to state claims against Weekes upon which relief may be granted. In connection with his motion to dismiss, and to provide further evidence to the Court of Plaintiff's unfounded claims, Weekes also filed a motion for the Court to take

judicial notice of certain documents in an unlawful detainer proceeding between the parties that occurred in January 2013. In response to these motions, Plaintiff asserts entirely new claims against Weekes and seeks to have such claims be made part of his Complaint. The statements set forth in Plaintiff's Affidavit in Opposition to Defendant's Motion for Judicial Notice are irrelevant and false, and the Court should decline Plaintiff's invitation to further expand his claims at this late stage of litigation. Also conspicuously absent from Plaintiff's response affidavit is any admissible evidence or legal support as to why Weekes' motion to dismiss should not be granted. Without such evidence and legal support, Plaintiff's opposition to the motion is not well taken. In short, the motion to dismiss should be granted.

ANALYSIS

A. Judicial Notice is Mandatory.

Plaintiff confuses the weight of the evidence sought to be introduced by the request for judicial notice with the evidentiary rule that requires the Court to take judicial notice. I.R.E. 201(d) provides that a court shall take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case when a party makes a written or oral request and identifies the specific documents for which judicial notice is requested. I.R.E. 201 applies to adjudicative facts. I.R.E. 201(a). An "adjudicative fact" is "[a] controlling or operative fact, rather than a background fact; a fact that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties. For example, adjudicative facts include those that the jury weighs." *Martin v. Camas County ex rel. Bd. Com'rs*, 150 Idaho 508, 512, 248 P.3d 1243, 1247 (2011) (quoting *Black's Law Dictionary* 669 (9th Ed. 2009)).

Here, Weekes has requested the Court take judicial notice of the Complaint, Answer, Transcript of Hearing and Judgment in Case No. CV-2013-03, *Weekes v. Rekow*, filed in the Third Judicial District of Idaho, in and for the County of Gem (the "Unlawful Detainer Case"). The pleadings and transcript in the Unlawful Detainer Case include multiple adjudicative facts that are helpful to the Court's determination of the issues in this case. For example, they provide sworn statements from Plaintiff of his agreement to pay rent, and the length of time he lived at the property, in addition to admissions that Weekes took action to fix problems with the water at the house, that Plaintiff gave different information to the Department of Labor than he gave to the Court in the Unlawful Detainer Case, and that Plaintiff failed to pay rent for several months during his tenancy. This evidence supports Weekes' defenses asserted in his motion to dismiss. In short, judicial notice is appropriate and mandatory.

B. Plaintiff's Motion to Amend the Complaint is Not Appropriately Before the Court.

By his affidavit, Plaintiff seeks leave to amend his Complaint to apparently include some kind of claim for damages against Weekes relating to payment of electrical service to the subject property. This motion is not appropriately before the Court. Rule 7(b)(3) governs the time limits for filing and serving motions. It requires that a motion and notice of hearing thereon be filed and "served so that it is received by the parties no later than fourteen (14) days before the time specified for hearing." I.R.C.P. 7(b)(3)(A). Plaintiff has not served Weekes with a notice of hearing on his motion and, to the extent Plaintiff desires his motion be heard at the pretrial conference on February 24, 2014, Plaintiff's motion is untimely.

C. Even if the Court Considers Plaintiff's Motion to Amend, the Court Should Deny the Motion.

Rule 15(a) of the Idaho Rules of Civil Procedure provides that leave to amend a complaint "shall be freely given when justice so requires." However, a court may deny a motion

to amend a complaint to add additional claims where the amended pleading does not set forth valid claims, or if the opposing party would be prejudiced by adding the new claim. *Weitz v. Green*, 148 Idaho 851, 858, 230 P.3d 743, 750 (2010). In considering the timeliness of a motion to amend, the Idaho Supreme Court has held, "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant...--the leave sought should, as the rules require, be freely given." *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 225 (1962)(internal citation omitted).

Plaintiff requests leave to amend the Complaint to "include true and correct copies of each Idaho Power statement for electrical service being debited from Plaintiff's salary for the period of time 2009 through August 4th, 2012."¹ Plaintiff then makes various statements about being charged for electricity,² being the victim of "physical and financial assault...,"³ and "theft by deception."⁴ Plaintiff also asserts violations of various provisions of Idaho's wage claim law.⁵ Beyond these bare allegations, Plaintiff fails to state precisely what claims he seeks to add to his Complaint. For this reason alone, Plaintiff's request must be denied.

The motion to amend should further be denied because it is untimely and fails to state valid claims against Weekes. The Complaint was filed October 10, 2012. The only claims asserted against Weekes were claims for breach of the warranty of habitability and, potentially, a claim for conversion. As a defense to the Unlawful Detainer Case, Plaintiff essentially alleged that even if he had failed to pay rent for several months, the amounts he allegedly paid for

¹ Affidavit of Plaintiff in Opposition to Defendant's Motion for Judicial Notice ("Plaintiff's Affidavit"), ¶4.
² Plaintiff's Affidavit, ¶3.

³ *Id.* at ¶5.

⁴ *Id.* at ¶¶5, 7.

⁵ *Id.* at ¶7.

electricity far outweighed the rent due, and eviction was therefore not appropriate.⁶ A similar claim was made in the course of Plaintiff's wage claim to the Idaho Department of Labor.⁷ Obviously, Plaintiff was aware of and believed he had a claim related to his alleged overpayment of electricity costs to Weekes as early as September 13, 2012—before he filed the Complaint in the instant case. Again in January 2013, Plaintiff believed he had some type of claim against Weekes for the alleged overpayment. Yet, he failed to move to amend his Complaint to assert such a claim. Now, over a year later and just one month before trial is set to begin, Plaintiff seeks to amend his Complaint to assert such a claim. Plaintiff's request is untimely and should be denied.

Additionally, to the extent Plaintiff is seeking to add a wage claim pursuant to Idaho Code §§45-608, 45-609 and 45-610, such a claim is barred by the applicable statute of limitations. Idaho Code §45-614 sets the statute of limitations for wage claims. Any employee claiming additional salary or wages for work done or services performed must commence an action for such claimed wages within six (6) months from the accrual of the cause of action. Idaho Code §45-614. A cause of action accrues under the statute when an employee has a right to collect the salary or wages that are allegedly owed to him. *Johnson v. Allied Stores, Corp.*, 106 Idaho 363, 679 P.2d 640 (1984). Plaintiff filed a wage claim in September 2012, which claim was decided on November 9, 2012. As noted by Judge Smith in the Unlawful Detainer Case,

⁶ See Affidavit of Jill S. Holinka in Support of Defendant's Motion to Dismiss and Motion to Take Judicial Notice ("Holinka Affidavit"), Exhibits A (transcript of unlawful detainer hearing) and C (answer to complaint for unlawful detainer). The complaint in the Unlawful Detainer Case was filed January 7, 2013 and the case was heard January 15, 2013. Plaintiff filed his answer in the Unlawful Detainer case on January 14, 2013. Notably, in his decision granting the unlawful detainer, Judge Smith discussed Plaintiff's defense related to the alleged overpayment for electricity by stating, "That's a separate suit. You guys can sue each other as much as you like to try to figure out how to make the funds even." Holinka Affidavit, Exhibit A, p. 23, L 25 – p. 24, L 5.

⁷ Holinka Affidavit, Exhibit C at Exhibit B (Wage Claim Determination). The Findings of Fact within the Wage Claim Determination state that the claim was filed September 13, 2012. The Wage Claim Determination was issued November 9, 2012.

...to the extent the Department could, they did award you \$1,273. You sat on your hands. You did not bring a timely suit. You didn't bring demand early enough to have them award you additional funds. That's why there's a statute of limitations, so that someone can't sit on their hands and make a complaint years later and try to get a lump sum of money.⁸

Judge Smith correctly noted that the six-month statute of limitations was applicable to Plaintiff's wage claim. Accordingly, any attempt by Plaintiff to seek additional wages at this point has long since passed.

D. The Facts Set Forth in Plaintiff's Affidavit and the Affidavit of Kathy Thomas is Irrelevant.

Plaintiff submits his own affidavit and that of Kathy Thomas in opposition to Weekes' motion to dismiss. Both affidavits contain inadmissible and irrelevant evidence that should not be considered by the Court. For example, the statements contained in Ms. Thomas' affidavit contain inadmissible hearsay and lack foundation. No timeframes or other specific details are provided to show her alleged "personal knowledge." Additionally, Plaintiff's affidavit contains statements about alleged overpaid electric bills and wage claims that are irrelevant to the warranty of habitability claims presently before the Court. Accordingly, the Court should strike the affidavits.

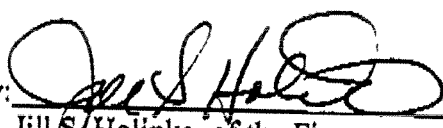
CONCLUSION

In short, Plaintiff has failed to provide any evidence or legal support as to why Weekes' motion to dismiss should not be granted. Accordingly, Weekes requests that the motion to dismiss be granted and the Complaint be dismissed in its entirety. Weekes further requests that the motion to amend be denied.

DATED this 19th day of February, 2014.

⁸ Holinka Affidavit, Exhibit A at p. 24, LL 6-13.

MOORE SMITH BUXTON & TURCKE, CHTD.

By: 
Jill S. Holinka, of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** this 19th day of February, 2014 served upon the following individuals and in the corresponding manner:

William D. Rekow
c/o Mauri McNaughton
1600 E. Main St., #5
Emmett, Idaho 83617

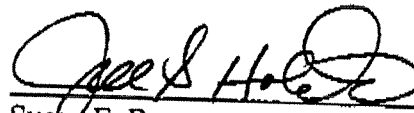
☒ via U.S. Mail
☐ via Facsimile
☒ via Email: *heviarti@gmail.com*

Honorable Susan E. Wiebe
1130 3rd Ave. N.
Payette, ID 83661

☐ via U.S. Mail
☐ via Facsimile (208) 642-6011
☒ via Email: *djwiebe@co.washington.id.us*
tracie@co.washington.id.us

Honorable Susan E. Wiebe
415 E. Main St.
Emmett, ID 83617

☐ via U.S. Mail
☒ via Facsimile (208) 365-6172
☐ via Email
☐ via Hand Delivery



Susan E. Buxton
Jill S. Holinka

WILLIAM D. REKOW, Plaintiff, Pro Se
c/o McNaughton
1600 East Main St., #5
Emmett, ID 83617

FILED
A.M. 3:40 P.M.

FEB 27 2014

SHELLY TILTON, CLERK
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF GEM

WILLIAM D. REKOW, Plaintiff Pro Se,	) Case No.: No. CV 2012-713
)
Plaintiff,	) PLAINTIFF'S MEMORANDUM IN OPPOSITION
	) TO DEFENDANT'S MOTION FOR SUMMARY
vs.	) JUDGMENT (formerly Motion To Dismiss)
	) and TIMELINE OF CASE
)
RONALD L. WEEKES and DOES I through)
)
V, Inclusive,)
)
Defendant)

COMES NOW, Plaintiff, William D. Rekow, Plaintiff Pro Se, and hereby
submits his Memorandum in Opposition to Defendant's Motion for Summary
Judgment (formerly Motion to Dismiss).

TIMELINE OF CASE

08/08/02 Weekes purchases the Property at 9449 Brill Rd. from Estate
of Leon Taylor.

On an initial date unknown to Plaintiff, Defendant begins
moving rental tenants into the farmhouse (hereafter referred to as the
"Farmhouse").

01/01/08 Plaintiff moves to the Farmhouse.

03/01/08 Jerry Brock, employee/tenant of Defendant, attempts to
apply tin to roof to ameliorate "little tiny leak" alleged by Defendant.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

06/00/08 Plaintiff employed by Defendant, becomes renter of Farmhouse at \$200 per month.

06/00/08-06/00/09 Plaintiff battles rodent infestation most rampant in the Farmhouse's pantry, also kitchen and bathroom.

07/00/08-06/00/09 Plaintiff makes numerous verbal requests of Defendant for repairs. Defendant declines to perform even minor repairs.

07/00/09 Plaintiff and roommate, Joseph Gerth, apply almost 300 pounds of tar to Farmhouse roof. Defendant declined to supply tar 'burner' and reimbursed Plaintiff for only 100 pounds of the 300 pounds applied. Plaintiff had to pay for and craft a tar burner at his own cost.

During the application of the roof tar, Plaintiff discovered three (3) carbon tetrachloride 'fire grenades' at lease half a century old. Plaintiff was aware of the lethal consequences if one of these 'fire grenades' were to activate. Defendant was aware of their presence, declined to remove.

08/00/09 Defendant has trees cut down or pulled down from front yard of Farmhouse, leaves stumps, deep holes, tree debris in situ, then threatens Plaintiff with loss of job and home when Plaintiff unable to mow or water yard.

09/00/09-08/00/11 Plaintiff continues to ask Defendant to supply reliable water service to Farmhouse; replace missing window screens, repair roof, repair broken windows, and restore door to opening covered by sheet of OSB plywood.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

09/00/10 Defendant's father, Wayne Weekes, damages sink in Farmhouse kitchen then failed to reimburse Plaintiff his out-of-pocket cost to have a licensed plumber make the repair.

08/00/11 Plaintiff's roommate, Kathy Thomas, witnesses Plaintiff's verbal request of Defendant to make repairs to Farmhouse, as well as Defendant's verbal response that Plaintiff would "lose your job" and get "thrown out" if Plaintiff "even mentioned repairs" ever again. Defendant also stated that Plaintiff "did not pay him enough to fix anything" and was "not going to hold me over a barrel for something I own".

10/00/11 Plaintiff queries Defendant's spouse, Angela Weekes, over diminished salary amounts; paystubs showing "it's the Electricity" are denied Plaintiff.

01/01/12 Plaintiff begins tracking discrepancies between hours worked and dollars received.

01/01/12-07/15/12 Plaintiff still being refused a paystub even though requested.

07/29/12 Defendant physically assaults Plaintiff when he requests the issue of no water be repaired. Plaintiff calls 9-1-1, Gem County Sheriff Deputy #288 responds and Plaintiff files report #02516.

07/30/12 Defendant serves "Notice of Eviction", immediate termination of employment; and, denial of electric service to the Farmhouse effective August 4th, 2012, plus rent of \$200 due 8/31/12

07/31/12 Plaintiff has to countersign "Notice of Eviction" in order to obtain a copy of same.

Plaintiff receives his first, last and only paystub.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

08/04/12 Plaintiff begins receiving electric service in his name; and, finally has a way to document actual Kilowatt hours used by Farmhouse.

08/31/12 Plaintiff attempts to deliver \$200 rental to Angela Weekes, who refused to accept.

09/04/12 Plaintiff attempts to file a claim with the Idaho Department of Labor, Wage & Hour Division by phone; but, is referred to a website to file electronically.

09/04/12 Plaintiff delivers \$200 rent refused on 8/31/12 and receives first, last and only such receipt from Angela Weekes.

09/13/12 Defendant's former counsel, Timothy J. Fleming, hand delivers a "Notice of Increase of Rent" to Plaintiff during the course of a pre-trial hearing related to the 7/29/12 assault.

 Plaintiff submits electronic complaint form to Wage & Hour Division, Board of Labor, State of Idaho. The delay was due to website's issues, Plaintiff did not delay his filing.

09/14/12 Plaintiff caused to be personally served a letter detailing 'defects in on or about' Farmhouse, requesting repairs, meeting the statutory requirement; and, as Plaintiff was still a tenant, not in arrears, he had "standing" to do so.

09/19/12 Plaintiff caused to be personally served upon Defendant's former counsel a letter listing two (2) additional defects and notice that repairs had NOT begun.

09/21/12 Plaintiff caused to be personally served upon Defendant's former counsel, a letter detailing and describing "missing personal property" of Plaintiff. Plaintiff had knowledge, information and belief that the Plaintiff's Memorandum Opposing Defendant's Motion for Summary Judgment and

property listed was in Defendant's possession, or under the care, custody and control of Defendant or his agents, employees or relatives.

09/24/12 Plaintiff caused to be personally served upon Defendant's former counsel a letter declaring his 'intent to file' under Idaho Code as neither Defendant nor counsel had responded nor had any repairs begun.

10/08/12 Plaintiff has a licensed contractor assess the Farmhouse defects and prepare an estimate to repair same. Excepting the water pump issue, his estimate was Thirteen Thousand Seven Hundred and Seventy-Five Dollars (\$13,775.00). To the best of Plaintiff's knowledge, information and belief, in ten (10) years of owning and renting the property, regardless of the nature or number of requests, Defendant made only one attempt at repairs, years before Plaintiff moved to the Farmhouse - a roofing job. Defendant sued that roofer (DOSS) over his workmanship.

On the same date, Plaintiff telephoned Valley Pump & Repair and conversed with a technician who had tried to repair the water pump at the Farmhouse. The technician posited that the pump was "under gauge of wiring required" to function reliably. The technician further stated that his "last work order" for the pump in question was 10/15/09.

11/09/12 Plaintiff requests of Defendant's current counsel return of his personal property.

11/27/12 Defendant has Notice to Quit issued.

12/02/12 Defendant's process server nails a copy of the Notice to Quit to the entry door of the Farmhouse.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

12/07/12 Defendant's current counsel serves discovery upon Plaintiff: First Interrogatories & Requests for Production and First Requests for Admission.

01/07/13 Unlawful Detainer (claiming Farmhouse on 5 acres or less parcel) filed by Defendant's counsel, assigned Case No. CV2013-3.

01/15/13 Hearing on unlawful detainer before Hon. Judge Tyler Smith, wherein judge declares Plaintiff will be "removed", as "No person should be living in this house. It is uninhabitable.".

Tenant's attempts to raise "retaliatory eviction" issue are ignored.

01/28/13 Plaintiff serves responses to Defendant's Requests for Admissions.

02/01/13 Plaintiff serves responses to Interrogatories and Request for Production.

02/15/13 Plaintiff's last day to remove items from 9449 Brill Rd. and Farmhouse.

03/14/13 Plaintiff files Request for Trial Setting and Pre-Trial Conference in Case NO. CV-2012-713.

01/01/14-01/31/14 Defendant and his counsel allege in sworn affidavits that the Farmhouse has been "raised"(sic) or "torn down". Untrue statements both. Plaintiff has photographic evidence, date and time-stamped, showing a substantial portion of the Farmhouse still intact on 02/25/14.

03/31/13-01/04/14 Plaintiff makes both in-person and telephone inquiries with the Clerk of the Court regarding scheduling of hearings in Case No. CV-2012-713.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

01/08/14 Plaintiff receives Court's Order setting hearing dates and outlining submittal deadlines.

02/06/14 Plaintiff e-mails Defendant's counsel, once again, describing in particular detail, the items of personal property Defendant has repeatedly denied possessing.

02/10/14 Defendant served motion re: judicial notice of CV-2013-3.

02/19/14 Defendant serves motion to dismiss.

02/24/14 Hearing before the Hon. Susan E. Wiebe wherein 'judicial notice' was granted; motion to dismiss was denied (changed to motion for summary judgment); motion hearing, pre-trial conference and trial dates reset; and, Plaintiff granted extension to 02/28/14, Friday, to file this document.

A portion of Plaintiff's 'personal property', alleged not to be in Defendant's possession, was returned to Plaintiff by Defendant's counsel, after the hearing mentioned above. The items returned matched precisely the description of each item, as set forth in Plaintiff's 02/06/14 e-mail .

PLAINTIFF'S OPPOSITION TO DEFENDANT'S ANALYSIS

Defendant quotes the Idaho Supreme Court decision in Worden v. Ordway 105 Idaho 719, 723672 P.2d 1049, 1053 (1983), Justice Huntley dissented, in part, stating: "The reasoning of the majority in that the court will not recognize a common law right in an area of law where the legislature has acted to some extent.

No authority is provided for the proposition that common law rights are repealed by inference or implication.

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

Suppose the next legislature, without statement of reason, repeals Idaho Code Section 6-320. Would the plurality taken then recognize the common law rights since there would be a void of legislation."

In a pamphlet disseminated statewide to renters in Idaho entitled Advice for Idaho Renters: Repairs (Revised 2/11) on the fourth page thereof, at the bottom of the page, it is stated: "'The 'warranty of habitability' is an implied promise in all rental contracts; it assumes **all landlords promise to maintain rental units to the legal minimum of health and safety.**"'.

(Emphasis added) It is Plaintiff's position that Landlord's ongoing refusal to meet even the legal minimums of health and safety of the Farmhouse during Plaintiff's tenancy constitutes an egregious breach. Further, to buttress Plaintiff's position, Idaho's Attorney General, in his offices' forty-three (43) page pamphlet on landlord/tenant rights and responsibilities dated March 2012, lists the following defects which landlord should repair

- Broken or missing doors and/or windows;
- Crumbling and cracked walls and ceilings;
- Defective plumbing;
- Lack of hot/cold water;
- Serious water leaks;
- Exposed wiring;
- Non-functioning heating units;
- Insect infestation;
- Leaking roof or walls from insufficient waterproofing or weather protection; and,
- Missing or dismantled smoke detectors.

Plaintiff would refer to here, and incorporate as though fully displayed hereat, the two hundred (200) plus photographs taken by Plaintiff of the Farmhouse defects. Implied or express, Defendant was not providing a healthy or safe premises, which is the basis for habitability.

SIZE OF FARMHOUSE PARCEL AT ISSUE

Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

In the unlawful detainer proceedings Transcript of Audio-Recorded Proceedings, Defendant herein claimed "a parcel five (5) acres or less" in order to proceed with the action. The judge raised the issue of parcel size during that January 15, 2013 hearing. Stating at Page 11, Line 23: ". . . "And, of course, the unlawful detainer statute may or may not apply to agricultural land over five acres." Ending at line 25. Then again on Page 12, Lines 4 through 20. It would appear that Defendant wishes to shrink or expand the size of the property to the end result he desires for himself.

Plaintiff sought clarification of just this issue from the Gem County Assessor. Plaintiff received information from the relevant sections of the Rules contained within the **Idaho Administrative Code** which delineate the **Rural Residential Lot** dimensions as one (1) acre on any agricultural use land; and, further, Gem County Assessor advised that the 1-acre parcel is assessed at a "market value" rate, further differentiating this Rural Residential Lot from the Agricultural use land. *Idaho Administrative Code*, in **Section 63-602G02.c.** defines Related land. "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home." (4-7-11). **Rule 645.01.a.** defines Homesite. The "homesite" is that portion of land, contiguous with, but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes." (7-1-99). Finally, **Rule 63-604.02.d.** states "Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99). In light of the above, it would appear that the Defendant fails to avoid his Section 6-320 'responsibilities'.

Finally, Defendant's citation regarding both Washington's and Nebraska's views glosses over the fact that (1) Plaintiff did not lease agricultural land; (2) Plaintiff was on a month-to-month tenancy; and, (3) Plaintiff's Memorandum Opposing Defendant's Motion for Summary Judgment and

applying the "**reasonable man**" (more aptly herein the "reasonable farmer") standard of scrutiny - no one can sow, grow and harvest a crop from irrigated land in a month.

PLAINTIFF'S CLAIM IS NOT 'MOOT'

Plaintiff restates his position regarding validity of his claim, his standing, neither of which are tied to his 'residency' at the Farmhouse. A Farmhouse which still stands. Plaintiff met the requirements of Idaho Code Section 6-320 by listing the defects, in writing, to landlord's attorney, asking for repairs, allowing more than three (3) days for repairs to begin, was still residing at the Farmhouse, and no rental monies were in arrears. The Plaintiff suffered damages by virtue of Defendant's failure to provide a "habitable" rental, which met the minimum legal health and safety standards.

PLAINTIFF'S CONVERSION CLAIM STANDS

If Plaintiff had no claim for conversion, how did he achieve return of a number of the missing items he claimed? Additionally, how could those items have reappeared ***precisely as Plaintiff described them*** in his 02/06/14 electronic communication with Defendant's counsel? The items were given to Plaintiff by Defendant and they were just what Plaintiff claimed. What more is there to say?

PLAINTIFF WAIVED NOTHING AND HIS HANDS ARE CLEAN

Plaintiff finds it difficult to parse how Defendant's 'lack of knowledge' that Plaintiff would assert his rights denies Plaintiff's right to pursue his claim. Plaintiff made no "delay" in voicing his requests for repairs. Plaintiff gave more than adequate 'notice' of, and response time for, repairs to correct defects. Defendant, surely, in the strictest interpretation, invaded Plaintiff's rights when Defendant physically Plaintiff 's Memorandum Opposing Defendant's Motion for Summary Judgment and

assaulted Plaintiff after Plaintiff (for the hundredth time) complained about the lack of water in the Farmhouse. AS BOTH LANDLORD AND EMPLOYER Defendant took "unfair advantage" of Plaintiff. In Jesse v. Lindsley, 233 P.3d 1 Idaho 2008, the Court stated: . . . "The general rule sustaining agreements exempting a party from liability for negligence is subject to two exceptions: '(1) one party is at an obvious disadvantage in bargaining power' . . .". The Court also stated: . . . "Thus the rule is that a landlord must exercise reasonable care under the circumstances for the protection of his residential tenant. This includes the duty, under Idaho Code Section 6-320 to maintain the premises in a manner that is not hazardous to the health or safety of the tenant. . .". Plaintiff alleges that rodent infestation (carriers of deadly Hanta virus); stinging insect infestation (possible anaphylactic shock to Plaintiff); dangerously low-hanging high power line at a point of ingress and egress to the Farmhouse; and, three (3) outdated, unstable carbon tetrachloride fire grenades are all manifestations of an unsafe and unhealthy Farmhouse.

In response to Defendant's allegation regarding "unclean hands", Plaintiff responds that he was told by Defendant that "repairs were coming" and Plaintiff waited a reasonable period of time before asking about the repair again. Plaintiff's behavior was not "inequitable". That designation appears to rest upon Defendant. Plaintiff committed no "fraudulent" or "dishonest" acts. Again, Defendant siphoned monies from Plaintiff's earnings (without permission). Defendant's constant threat to "fire you and throw you out" when Plaintiff wanted water, certainly seems to rise to "unfair" at the very least. Defendant alleges the Farmhouse was "torn down in January 2014", yet Plaintiff's dated and time-stamped photos clearly show that statement is untrue.

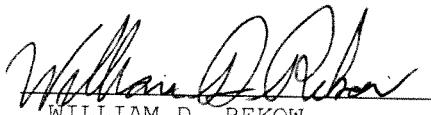
Throughout these intervening months, Plaintiff has striven to conduct himself in a fair, honest and truthful manner. Defendant's actions speak for Plaintiff's Memorandum Opposing Defendant's Motion for Summary Judgment and

themselves. In conclusion, Plaintiff would quote the Court in Axtel v. Northern Pacific Railway Co., 9 Idaho 932, 74 P 1075: "One who, by his wrongful acts augments, diverts or accelerates the forces of nature in such a manner as to injure another is liable for damages therefore."

CONCLUSION

For all of the reasons set forth herein, Plaintiff William D. Rekow respectfully requests that the motion for summary judgment be denied, that Plaintiff's action on his Complaint remain before this Court and proceed to trial; and, that Defendant pay his own costs and attorney fees incurred in connection with this matter.

DATED this 27th day of February, 2014


WILLIAM D. REKOW,
Plaintiff, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (formerly Motion to Dismiss) on this 27th day of February, 2014 served electronically, via e-mail upon the parties listed below:

Jill S. Holinka
Moore, Smith, Buxton & Turcke, Chtd.
Attorney for Defendant
950 West Bannock Street
Suite 520
Boise, ID 83702

jsh@msbtlaw.com
seb@msbtlaw.com

Honorable Susan E. Wiebe
415 East Main St.
Emmett, ID 83617

djwiebe@co.washington.id.us


Mauri McNaughton

EXHIBIT "A"
1 of 2 pages

TRANSMISSION VERIFICATION REPORT

TIME : 11/02/2012 10:45

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

11/02 10:45
4547723
00:00:25
01
OK
STANDARD
ECM

(208) 454-7720

Fax to: Marina Reynoso, Labor Compliance Officer
From: William D. Rekow
Date: November 2, 2012
Re: Rekow v. Weekes

Dear Ms. Reynoso:

I have tried to decipher both the printed paystubs and the handwritten ones for the contested period of 2/12 through 7/12; and, honestly, I cannot make heads nor tails of their categories. I was never offered nor paid "mileage". My taxes (according to the tax handbook) appear to have been figured on net pay after Weekes took their cash deductions.

For the 6 months in question, the electric deductions totaled \$1,805.99; but, I have never seen an "actual power bill". However, for the 8/4/12 through 10/21/12 period, while electric service was in my name, the total cost for electricity for the property was \$149, averaging \$60 per month.

Please be aware that I, too, share your frustration over this matter. Thank you for bearing with me during this arduous process. Your fortitude is bested only by your professionalism.

William D. Rekow

EXHIBIT "A"
2 of 2 pages

A REO reel type lawnmower missing a roller and having a broken intake manifold. Sold to and later bought from Doug Minium. If it has not been disposed of, it may be in the equipment shed at 9449 Brill Rd.

A gas or kerosene lantern, which may be in what remains of the home.

A Maytag gasoline washer multi tool made of stamped metal. It may be in what remains of the home, hanging on a nail east of the water heater.

✓ My chassis grease gun and air compressor stub fitting were recovered; however the grease gun was missing its tip. That provides some difficulty, as good American made tips are hard to come by.

[REDACTED]

[REDACTED]

[REDACTED]

Thanks,
William D. Rekow

Good morning, Mr. Rekow,

EXHIBIT "B"
2 of 2 pages

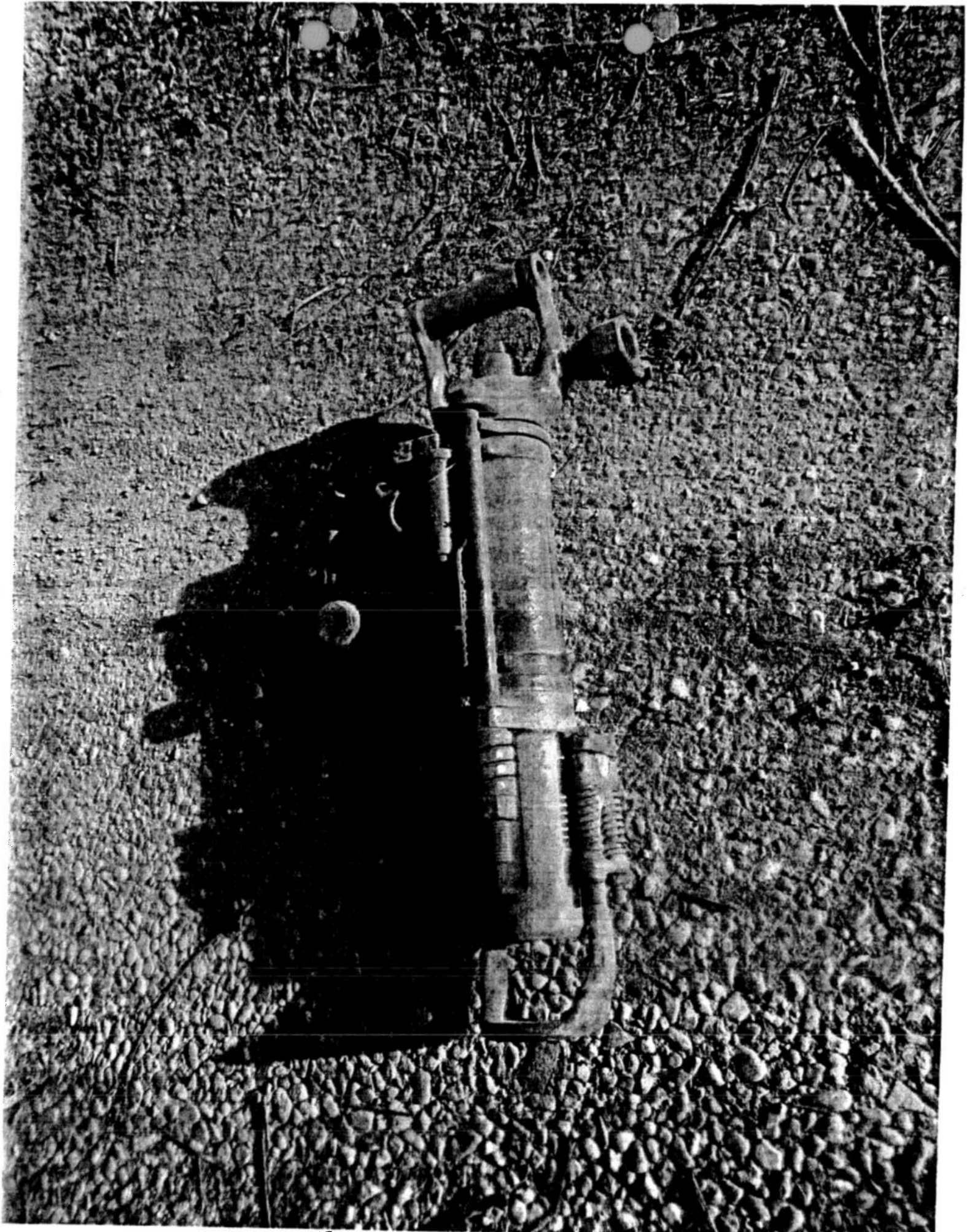


EXHIBIT C - 1055

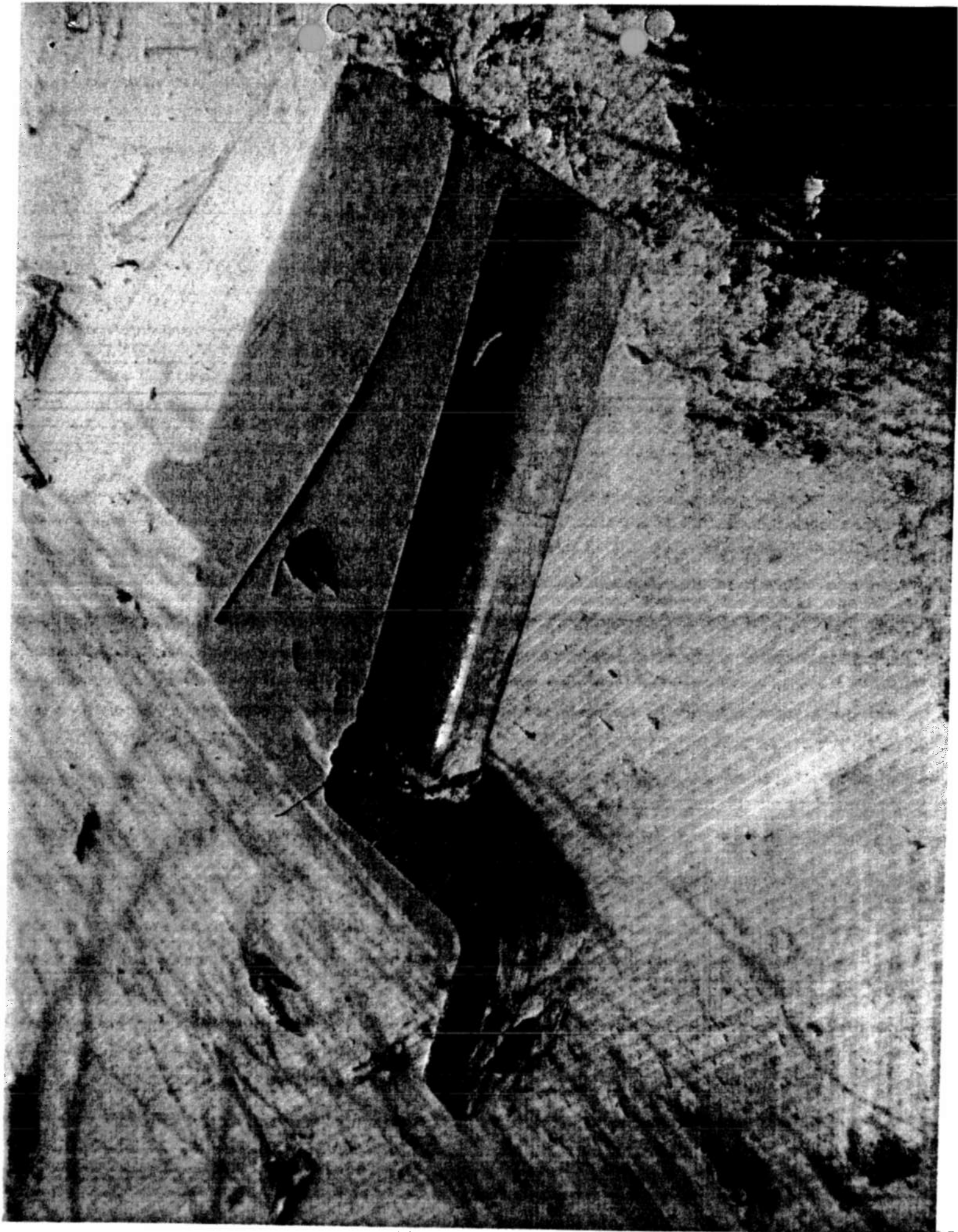



EXHIBIT - 2 OF 5

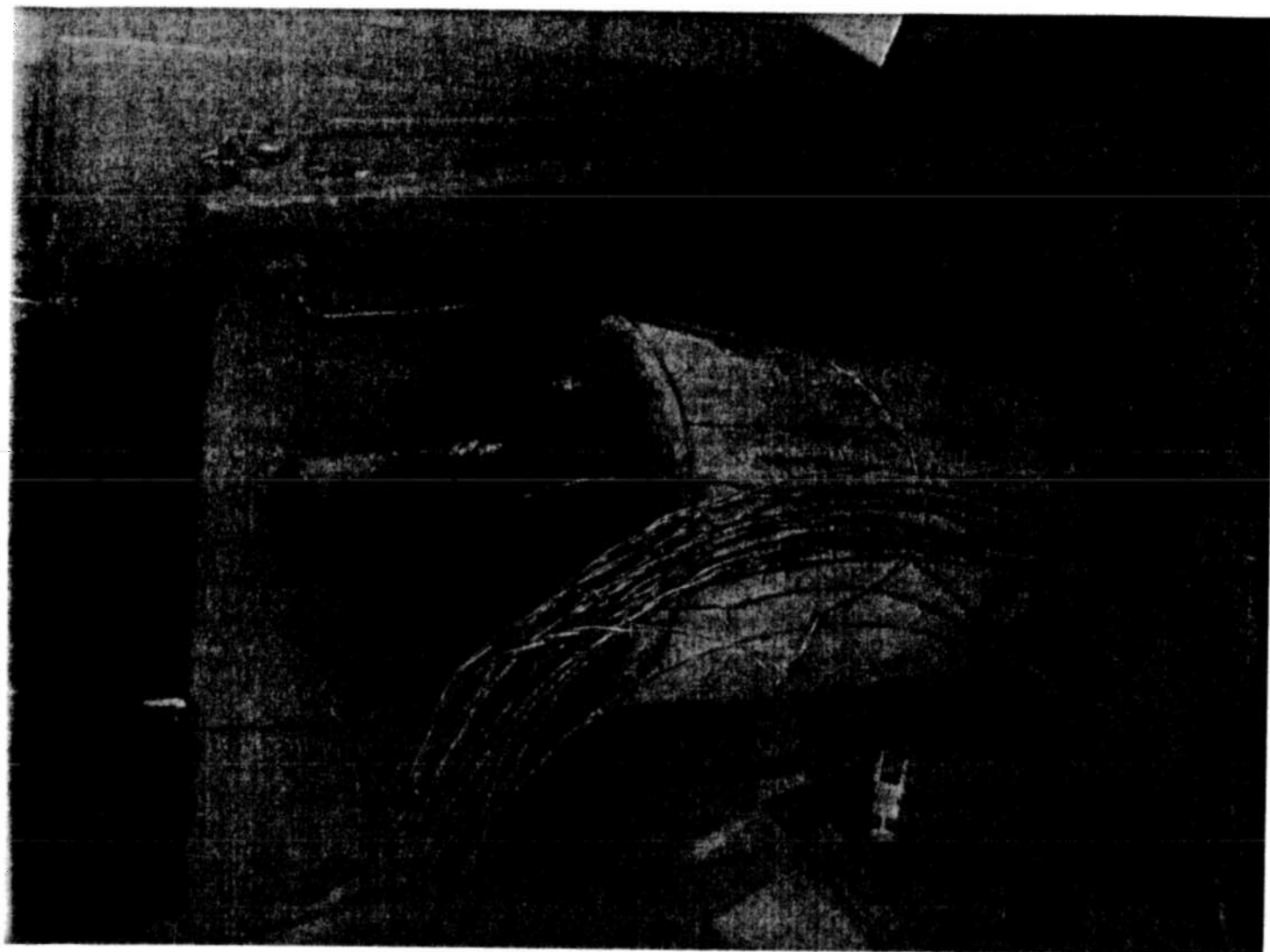
A black and white portrait of a man in a military uniform, wearing a peaked cap with a circular emblem. The man has a serious expression and is looking slightly to the left. The portrait is the background for the title text.

THE TOMMEL PAPERS

EDITED BY B.H. LIDDELL-HART



EXHIBIT C-40F5



DSCN1144.JPG

EXHIBIT -
5 of 5

TO: Marina Reynoso, Labor Compliance Officer
FROM: William D. Rekow
RE: Claim ID # 16784 – Response to Respondents' 10/26 letter
DATE: October 30, 2012

FAX to: (208) 454-7720

Dear Ms. Reynoso:

My response to the Weekes' allegations, via their attorney's letter of 10/26/12 herein sets forth my disputation of statements therein as follows:

1. While it is not relevant to the wage dispute at hand, I was neither homeless nor unemployed at the time of my accepting employment with Weekes' Trucking. My Residence address was 1600 East Main St., #5 Emmett, ID 83617; and, I was employed By Wholesale Tires & Axles, owned and operated by Leo J. Radandt. Mr. Radandt's Bookkeeper at the time of my employment will attest to that fact.
2. When Mr. Weekes offered me employment, I specifically inquired as to My hourly rate, which Mr. Weekes quoted as "Ten Dollars per Hour".
3. When I delivered my hours to Angela Weekes (a) my hours were not Questioned or disputed; (b) I personally watched her input into her desktop calculator A multiple of 10 times the number of hours; and, © I was NEVER advised that any part Of my pay was considered an ADVANCE or a DRAW. And , as the attorney points out, it is in contravention of Idaho law to make such, without written authorization from the employee. Nor did employer ever, on paper, to employee define the disposition of said "advance" or "draw", or present employee with a receipt for said charges, as is called for by Idaho's prevailing statutes.
4. The handwritten "breakdown" attached to the 10/26 letter does NOT Match the paystub copies provided to your agency on October 3rd, 2012 and copied to me in a mailing thereafter. Plus, none of the deductions by employer were ever itemized, illuminated, elucidated or ever made available to employee at the time said deductions were made.

EXHIBIT D
1 of 3 PGS

5. No one has ever shown me "an actual power bill" in any amount, let alone the amounts alleged in the 10/26/12 letter. I, however, now have service with Idaho Power in my own name (not Ronald Weekes' as previously existed) and, to that end, I possess actual power bills, showing my household electricity bill as \$60 to \$65 per month of service. It is apparent now that the Weekes were charging the cost of watering their livestock to me. When I contacted Idaho Power, inquiring as to the likelihood of a residential power bill (for a 3 bedroom 1 bath ranch style residence) being over \$300 per month, Idaho Power's billing representative basically called it "highly irregular, unlikely, and not normal"). Plus, the attorney's letter states that the "average electric bill was \$100 per month.

6. As to the allegations regarding "insubordination" as a reason for termination of Mr. Rekow's employment, we say balderdash. On July 29th, 2012, Mr. Rekow asked when Mr. Weekes would be repairing the water pump that supplied the residence, as it had, for months, failed on a regular basis, and there was no constant water supply for bathing, cooking, or bathroom facilities. At that point, Mr. Weekes came to the pasture where Mr. Rekow was working and committed battery upon Mr. Rekow. Mr. Rekow called the County Sheriff to file a complaint, and the next day, Mr. Weekes presented Mr. Rekow with the retaliatory notice of eviction (Exhibit B), wherein it was stated that Mr. Rekow was terminated and that (in direct contravention of Idaho Code Section 6-320) the electricity would be shut off on August 4th, 2012.

7. Mr. Rekow was never informed that salary he received was in the form of an advance or a draw. In fact, quite the contrary, each time hours were submitted to Angela Weekes, she was observed opening the Federal and State Withholding Tax booklet. Additionally, Angela Weekes, stated on more than one occasion, that 'PAYDAY' was the 1st and the 15th of each calendar month.

8. As to the "benefit" to Mr. Rekow of residing at 9449 Brill Road, all such benefit accrued to the Weekes', in that Ronald Weekes expected Mr. Rekow to be available to work 24/7, on demand, without any "standby" monetary arrangement being made.

9. Since, until August 4th, 2012, the service with Idaho Power was in the name of Ronald Weekes, Mr. Rekow was unable to discern how the household electric usage was being separated from the Weekes' commercial usage for livestock watering, running air compressors, block heaters for farm equipment, etc. Now that he possesses actual documented power usage from Idaho Power, it is obvious that the employer was using his employee's money to pay company expenses.

EXHIBIT D
2 OF 3 PGS

10. Mr. Rekow did, on numerous paydays, question Angela Weekes regarding what he viewed as shortages in his pay. In the reverse, Weekes never questioned or disputed any amount of hours submitted to them at the time submitted.

11. Mr. Rekow also disputes that he argued over work to be performed. He did, however, bring equipment safety hazards and failures to Mr. Weekes' attention. And, each time he did so, Mr. Weekes threatened termination or eviction if Mr. Rekow did not use the failing or unsafe equipment, regardless of any danger to the operator or other workers.

Once again, thank you for your courtesy and cooperation in this matter.

Very truly yours,

William D. Rekow

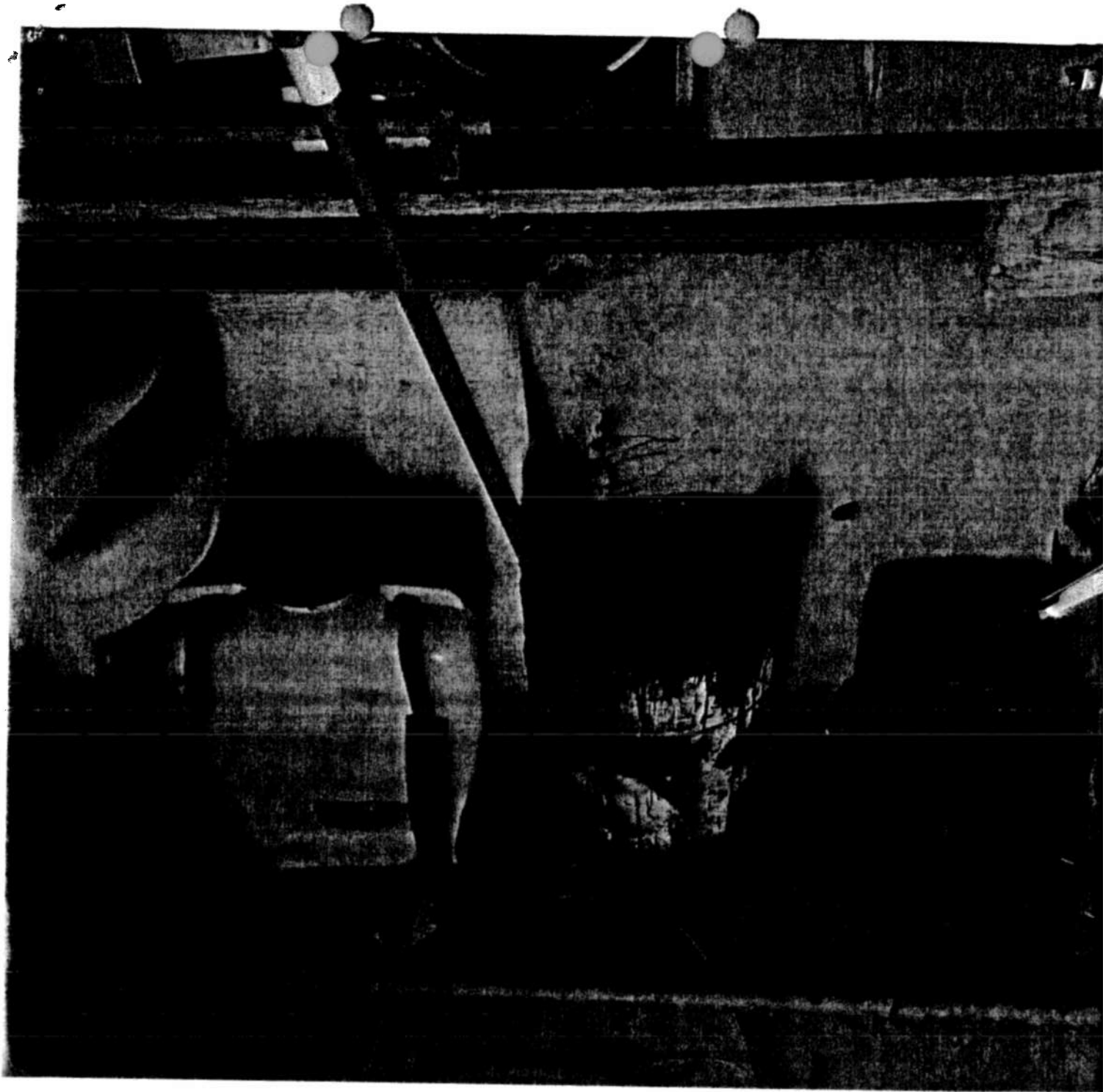
WDR/mmn

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EXHIBIT D
3 OF 3 Pgs

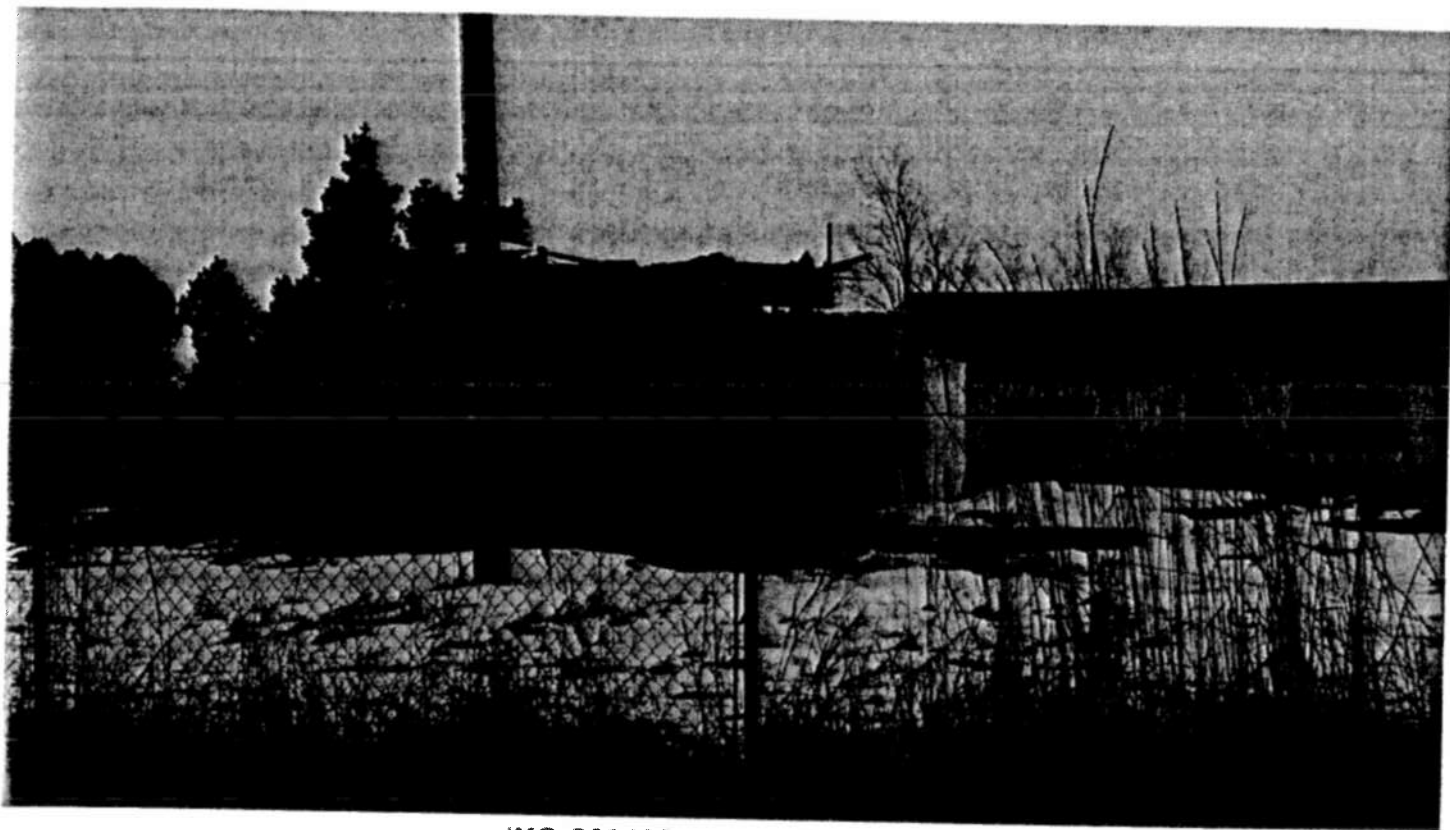


EXHIBIT E
10F2



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EXHIBIT E
2 OF 2



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EXHIBIT F
1 OF 2



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EXHIBIT F
2 OF 2

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

WILLIAM REKOW,

Plaintiff-Respondent,

vs.

RONALD WEEKES,

Defendant-Respondent.

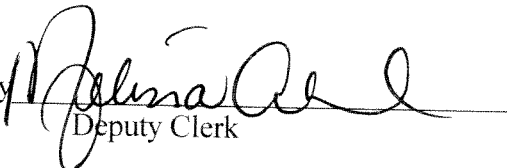
)
)
) SUPREME COURT NO. 42265
)
)
) CERTIFICATE OF EXHIBITS
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I, SHELLY TILTON, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem, do hereby certify:

That there were no exhibits which were offered or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Emmett, Idaho this 27th day of Dec, 20 14.

SHELLY TILTON, Clerk of the District

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

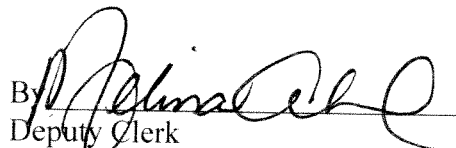
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

WILLIAM REKOW,)	
)	
Plaintiff/Appellant,	)	Supreme Court No. 42265
)	
vs.	)	CLERK'S CERTIFICATE
)	
RONALD WEEKES,)	
)	
Defendant/Respondent.)	
_____)	

I, Shelly Tilton, Clerk of the District Court of the Third Judicial District, of the State of Idaho, in and for the County of Gem, do hereby certify that the above and foregoing AUGMENTED Record, in the above entitled cause, was compiled and bound under my direction and is a true, full, and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including all documents filed or lodged as requested in the Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Emmett, Idaho, this 24th day of Dec, 2014.

SHELLY TILTON
Clerk of the District Court

By 
Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

WILLIAM REKOW,)	
	)	SUPREME COURT NO. 42265
Plaintiff/Appellant.)	
)	
vs.	)	CERTIFICATE OF SERVICE
)	
RONALD WEEKES,)	
)	
Defendant/Respondent.)	
)	
_____)	

I, Shelly Tilton, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem, do hereby certify that I personally mailed, by United States Mail, one copy of the **Supplemental Clerk's Record** and the **additional Reporter's** Transcript to each of the parties or their Attorney of Record as follows:

William Rekow
C/O Mauri McNaughton
1600 E. Main St. #5
Emmett, Idaho 83617

Jill Holinka
MOORE SMITH BUXTON & TURCKE, CHTD
950 W. Bannock St. Ste 520
Boise, Idaho 83702

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 27th day of Dec, 2014.

SHELLY TILTON
Clerk of the District Court

By [Signature]
Deputy Clerk

CERTIFICATE OF SERVICE